

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MARCH 23, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

J. G. Hook, Inc.

v.

Sportailor, Inc.

Opposition No. 91,881
to application Serial No. 74/290,167
filed on June 16, 1992

Joel S. Goldhammer of Panitch Schwarze Jacobs & Nadel for J.
G. Hook, Inc.

Peter J. Georges of Breneman & Georges for Sportailor, Inc.

Before Seeherman, Quinn and Bucher, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

J. G. Hook, Inc. has opposed the application of
Sportailor, Inc. to register HOOK & TACKLE as a trademark
for luggage.¹ As grounds for opposition, opposer has
alleged that it has used the marks J.G. HOOK, HOOK, and

other marks including these terms for luggage since 1980, and for wearing apparel since 1975; that its "Hook" marks are well known to retailers and others in the trade as opposer's marks; that opposer is known in the trade and by consumers as "HOOK"; that it owns various registrations for J. G. HOOK and design for, inter alia, luggage, apparel for men and women, jewelry, belts and scarves; and for HOOK SPORT and design for, inter alia, women's sportswear; and that applicant's mark, used for its identified goods, so resembles opposer's marks that it is likely to cause confusion, mistake or deception.

Applicant has denied all the salient allegations in the notice of opposition.

Only opposer has submitted evidence. Under a notice of reliance, opposer has made of record 44 articles taken from various publications, as well as status and title copies of the following registrations:²

¹ Application Serial No. 74/290,167, filed June 16, 1992, asserting first use and first use in commerce as early as January 1992.

² Opposer did not specifically plead ownership of Registrations Nos. 1,814,984 for J. G. HOOK; 1,773,210 for HOOK WEAR and design; 1,768,122 for J. G. HOOK JEANSWEAR; 1,817,982 for J. G. HOOK JEANSWEAR and design; and 1,836,229 for HOOK SUIT and design. However, because these registrations were submitted during opposer's testimony period under a notice of reliance, and applicant did not object, we deem the pleadings to have been amended to include them.

Handbags, wallets, brief cases and luggage³

Men's and women's sport shirts and women's dresses⁴

Women's clothing, namely, shirts, dresses, blouses, pants, socks, shorts, jackets, coats, sweaters, skirts, kilts, belts, and scarves; and men's clothing, namely, outer jackets, overcoats, trench coats, rain coats, suits, sports coats and tailored pants⁵

jewelry; shirts, dresses, blouses, pants, socks, shorts, jackets, sweaters, skirts, kilts, belts, and scarves⁶

ladies' sportswear, namely pants, short [sic], shirts, blouses,

³ Registration No. 1,231,934, issued March 22, 1983; Section 8 affidavit accepted; Section 15 affidavit received.

⁴ Registration No. 1,068,167, issued June 21, 1977; Section 8 affidavit accepted; Section 15 affidavit received. The Board takes judicial notice that Office records show that the registration was renewed subsequent to opposer's filing of the notice of reliance. See TBMP § 703.02(a).

⁵ Registration No. 1,617,734, issued October 16, 1990; Section 8 affidavit accepted; Section 15 affidavit received.

⁶ Registration No. 1,193,945, issued April 20, 1982; Section 8 affidavit accepted; Section 15 affidavit received.

sweaters, jackets, coats
and dresses⁷

men's, women's and
children's wearing
apparel; namely, pants,
shorts, shirts, dresses,
shirts [sic], blouses,
vests, sweaters, jackets
and coats⁸

J.G. HOOK JEANSWEAR

jeans, pants, skirts,
shorts, shirts and
jackets⁹

J.G. HOOK

men's and women's
apparel; namely, suits,
pants, skirts, dresses,
shorts, sweaters, coats,
rainwear, jackets,
blazers, vests, socks,
scarves, shirts and
blouses¹⁰

jeans, pants, skirts,
shorts, shirts and
jackets¹¹

⁷ Registration No. 1,620,047, issued October 30, 1990; Section 8 affidavit accepted; Section 15 affidavit received.

⁸ Registration No. 1,733,210, issued November 17, 1992. Office records do not indicate that the required Section 8 affidavit was filed by the deadline of November 17, 1998. However, in order to allow sufficient time to associate Section 8 affidavits with files and act on them, it is Office policy not to cancel registrations for failure to file a Section 8 affidavit until six months after the deadline. Accordingly, we have treated this registration as still being in effect.

⁹ Registration No. 1,768,122, issued April 27, 1993.

¹⁰ Registration No. 1,814,984, issued January 4, 1994.

¹¹ Registration No. 1,817,982, issued January 25, 1994.

men's and women's
apparel; namely, suits,
pants, skirts, shorts and
jackets¹²

men's outer jackets,
overcoats, trench coats,
rain coats, suits, sports
coats and tailored
pants¹³

Opposer and applicant have filed briefs, and opposer
has filed a reply brief.

Priority is not an issue in view of opposer's
registrations which are of record. **King Candy Company v.**
Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108
(CCPA 1974)

This brings us to the issue of likelihood of confusion
between opposer's marks, as registered for its goods, and
applicant's mark, as used for the goods identified in its
application.¹⁴ In determining this issue, we have

¹² Registration No. 1,836,229, issued May 10, 1994.

¹³ Registration No. 1,305,088, issued November 13, 1984; Section
8 affidavit accepted; Section 15 affidavit received.

¹⁴ In its brief opposer makes some reference to likelihood of
confusion with respect to opposer's J. G. HOOK name, and
includes the argument that "The Business of J.G. Hook is Well
Known in the Trade and among Consumers Simply as 'HOOK'".
Brief, p. 4. To the extent that opposer is asserting likelihood
of confusion with the trade name J.G. Hook, opposer has provided
no evidence of use of this trade name, and certainly no evidence
of use prior to the filing date of applicant's application,
which, in the absence of evidence of applicant's use, is the
earliest date on which applicant is entitled to rely. In this
connection, we note that the various articles taken from the

considered all of the relevant factors as set forth in **E.I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

First, it should be reiterated that the articles submitted by opposer are not evidence of the truth of the statements made in the articles; their evidentiary value is limited to the fact that the articles have been published, and have presumably been viewed by the readers of the particular publications.

Turning to the factor of the similarity of the goods, opposer's Registration No. 1,231,924 for J.G. HOOK and design (the design being an anchor in the second "o" of HOOK) is for, inter alia, luggage. Applicant's goods are identified as luggage. Accordingly, we must deem these goods to be legally identical, to travel in the same channels of trade and to be sold to the same class of consumers.

The goods in opposer's other registrations, however, are for various items of apparel and apparel accessories. Although opposer asserts that luggage and apparel are closely related, it has not provided any evidence to support this claim. The case it cites for its position, **Jantzen, Inc. v. Evans-Aristocrat Industries, Inc.**, 147 USPQ 531, 532

NEXIS data base cannot be used as evidence of the truth of the statements made therein.

(TTAB 1965) does include the statement that "pocketbooks and related items of luggage would normally be considered as accessories or coordinates to beach or sportswear."

However, this statement refers to luggage which is related to pocketbooks, not to a general relationship between luggage, on the one hand, and beachwear or sportswear on the other. Although pocketbooks have been viewed as accessories to sportswear because pocketbooks are frequently matched to clothing to form an outfit, there is no evidence in this record that people match their luggage to their clothing to create an ensemble.

Because opposer has not demonstrated a relationship between the luggage identified in applicant's application and the various items of apparel in opposer's registrations, we find no likelihood of confusion with respect to any of the registrations for clothing.

Our focus, thus, is whether applicant's mark HOOK & TACKLE for luggage is so similar to opposer's mark J.G. HOOK and design, shown below, for luggage, as to be likely to cause confusion.



As opposer has pointed out, when marks are used on identical goods or services, the degree of similarity

necessary to support a conclusion of likely confusion declines. **Century 21 Real Estate Corp. v. Century Life of America**, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). However, in the instant case, we find that the marks are sufficiently different in appearance, pronunciation, connotation and overall commercial impression that confusion is not likely, despite the fact that they are used on legally identical goods.

Although both marks contain the term HOOK, that is where the similarity ends. Obviously, HOOK is the first word of applicant's mark, and is the last element of opposer's. The other portions of the marks distinguish them visually and phonetically. They also have different meanings. Opposer's mark, J. G. HOOK and design, has the connotation of a name, as evidenced by the fact that the statement "The name 'J.G. Hook' is merely fanciful and does not identify a particular individual" appears on the registration certificate. While we acknowledge that at least one dictionary defines "hook" as an anchor,¹⁵ and to those aware of this meaning it would be reinforced by the

¹⁵ Webster's Third New International Dictionary, unabridged, © 1976. However, two other dictionaries we consulted, The Random House Dictionary of the English Language, 2d ed. unabridged, © 1987, and The American Heritage Dictionary of the English Language, new coll. ed., © 1976, do not provide such a definition. The Board may take judicial notice of dictionary definitions. **University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.**, 213 USPQ 594 (TTAB 1982), aff'd., 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

design element in opposer's mark, the overall impression conveyed is that of an individual whose surname means anchor, rather than that of the word "anchor" per se.

As for applicant's mark, various meanings could be ascribed to HOOK & TACKLE. Applicant contends that the mark has the connotation of fisherman's gear, and we note that "hook" is defined as "a fishhook" and "tackle" is defined as "equipment, apparatus, or gear, esp. for fishing: *fishing tackle*."¹⁶ As a result, the combination of these terms in the mark HOOK & TACKLE might well be perceived as referring to fishing equipment. Opposer appears to agree with this connotation, at least in part, stating in its main brief that "hook and tackle" comprise equipment that is used for fishing purposes.¹⁷ Opposer also contends that "hook and tackle" would be understood as a reference to a "ships rigging," although the dictionaries we have consulted indicate that only "tackle" refers to "the gear and running rigging for handling a ship or performing some task on a ship."¹⁸ There is no indication in the dictionary definitions, nor has opposer provided any evidence, that a

¹⁶ The Random House Dictionary of the English Language, 2d ed. unabridged, © 1987.

¹⁷ We note that in its reply brief opposer criticizes applicant for asserting that HOOK & TACKLE has this meaning without submitting any evidence in support of this claim.

¹⁸ The Random House Dictionary of the English Language, 2d ed. unabridged, © 1987.

"hook" or anchor is used with "tackle" as part of a ship's rigging. Thus, we cannot accept opposer's contention that applicant's mark would have this connotation.

Although both parties have conceded that applicant's mark HOOK & TACKLE has the connotation of fishing equipment, it is not readily apparent to us why purchasers would ascribe this meaning to a mark used for luggage. Given the variety of meanings of the words "hook" and "tackle," it seems to us that other meanings might also apply. However, even if we accept that applicant's mark HOOK & TACKLE would have the connotation of fishing equipment or gear, we cannot agree with opposer's statement that the connotations of the marks are similar because both have a nautical theme. The fact that fishing requires water does not make fishing gear a nautical term.¹⁹ More importantly, as we stated above, the connotation of opposer's mark is that of a name, not of the word "anchor" per se.

We have considered, but reject, opposer's argument that its mark is famous. Opposer has provided no evidence regarding the length of time, the geographic extent, or the amount of its sales or advertising of any of its goods, let alone luggage. The only evidence opposer has submitted which it asserts goes to the issue of fame are the various

¹⁹ "Nautical is defined as "of or pertaining to sailors, ships, or navigation: *nautical terms*. Pertaining to ships or sailors." The Random House Dictionary of the English Language, 2d ed. unabridged, © 1987.

newspaper articles taken from the NEXIS data base. A review of these articles, however, shows that the vast majority of them, 39 out of 44, are from trade papers. Most of these articles merely report on a business development for opposer, for example, "As part of an expanding license program at J.G. Hook, the firm has licensed its name for men's socks to Soxland, Inc." "Footwear News," July 10, 1995. Other articles make only a casual reference to opposer or opposer's J. G. HOOK mark. One of these types of articles discusses how mass merchandisers are becoming important distribution channels for outerwear manufacturers. The second page of the three-page article has the statement, "Essex Manufacturing, which holds licenses for J. G. Hook and Misty Harbor slickers, for example, has developed lower-priced private label collections to enhance its business." "Women's Wear Daily," Sept. 13, 1994. Even if we consider all the trade journal articles, including those which make only a casual reference to opposer or opposer's J. G. HOOK mark, we find that the various mentions of opposer or its activities or its J. G. HOOK label in 39 articles over a 13-year-period is insufficient to establish that J. G. HOOK is a famous mark to the trade, let alone to the general public. Thus, we disagree with opposer's assertion that these articles "--merely by the way they treat the J.G. Hook brand

name--are indicative of the fact that the J.G. Hook name and the HOOK Marks have achieved fame." Brief, p. 9.

As for the five articles of record which appeared in general newspapers, four of the references to opposer or the J. G. HOOK mark were in passing. For example, midway through a three-page article about a new J.C. Penney store, in a listing about various brands the store carries, is the statement, "J.G. Hook and Joneswear are in career, and Jessica McClintock is available in dresses." "Dallas Morning News," Oct. 14, 1996. The only story which is arguably focused on opposer is about a new business in an old warehouse section of St. Louis which will be the "home of a new line of men's clothing that carries the J.G. Hook Label." "St. Louis Post-Dispatch," April 11, 1991. Again, we find this evidence woefully inadequate to establish that the J. G. HOOK mark is well known to the general public, let alone that it is famous. We would also point out that not one of the articles, in either the trade papers or those circulated to the general public, even mentions that opposer uses or licenses the mark J. G. HOOK for luggage, or that opposer is involved in any way with the sale of luggage.

Opposer has also argued that J.G. HOOK is inherently distinctive, and that there is no evidence of third-party registrations or uses of other "Hook" marks. Nonetheless, for the reasons we have given previously, we find that the

marks themselves--J. G. HOOK and design, and HOOK & TACKLE--are so different that confusion is not likely even when they are used on identical goods, i.e., luggage, and even though the mark J. G. HOOK and design is inherently distinctive and arbitrary for luggage. In this connection, we note that one duPont factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks. **Roederer v. Delicato Vineyards**, 148 F.3d 1373, 47 U.S.P.Q.2d (Fed. Cir. 1998); **Kellogg Co. v. Pack'em Enterprises**, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991), *aff'g.* 14 USPQ2d 1545 (TTAB 1990).

Finally, we point out that our determination herein has not been affected by the lack of evidence of actual confusion. Because no evidence as to the parties' use of their marks has been made of record, we have no basis for concluding whether the absence of actual confusion indicates that confusion is not likely to occur.

Decision: The opposition is dismissed.

E. J. Seeherman

T. J. Quinn

D. E. Bucher
Administrative Trademark Judges
Trademark Trial and Appeal Board